CHIAM HENG HSIEN

v.

JURONG TOWN CORP.

COURT OF APPEAL, SINGAPORE
WEE CHONG JIN CJ
LAI KEW CHAI J
LP THEAN J
[CIVIL APPEAL NO. 48 OF 1983]
4 APRIL 1985

LABOUR LAW: *Employment - Dismissal null and void - Damages of salary - Whether contrary to the Employment Act (Cap. 122) and contrary to rules of natural justice.*

The appellant was engaged by the respondent from 1 June 1971. After a year's probation, the appellant was confirmed in the post from 1 June 1972. On 24 June 1976, the appellant received a letter from the respondent alleging that the appellant had breached r. 111 of the terms and conditions of service of the respondent. The appellant was immediately suspended. On 5 November 1976, the respondent informed the appellant that the service of the appellant was terminated from 23 June 1976.

On 13 October 1978, the appellant took out a writ against the respondent, alleging that that the decision to dismiss him was null and void, on several grounds. He claimed a declaration that the dismissal was null and void and a declaration that he had continued and was in the employment of the respondent in the position he held before 23 June 1976 and was entitled to such remuneration or alteratively damages. Chua J held that his only remedy lay in damages of 3 months' salary. The appellant appealed against this decision.

Held:

[1] The argument that employment would be permanent until retirement was not tenable and was unacceptable.

[2] On the construction of Clause 2(f) of the agreement between the respondent and the appellant, ss. 10 and 11 of the Employment Act, Clause 26 of the "Memorandum of Terms & Conditions of Services Applicable to All Monthly Rated Permanent Officers of the Corporation" and r. 66 of the Terms and Conditions of Service, not less than 4 weeks' notice would be required to be given either by the appellant or the respondent in terminating the contract.

[3] On the circumstances of this case and following *Francis v. Municipal Councillors of Kuala Lumpur*, there were no circumstances which made it just or proper to make the declarations asked for by the appellant and that his only remedy was a claim for damages.

[4] On the assessment of damages, it was found that the appellant ceased working for the respondent permanently from 5 November 1976. Therefore the damages should be assessed from 23 June 1976 to 5 November 1976 and he can't claim for any salary after this date. Therefore the appellant is entitled to damages limited to 3 months' salary.

[Appeal dismissed with costs.]

Cases referred to:
McClelland v. Northern Ireland General Health Services Board [1957] 1 WLR 594
Vine v. National Dock Labour Board [1957] AC 488
Francis v. Municipal Councillors of Kuala Lumpur [1962] 28 MLJ 407
Gunton v. Richmond-upon-Thames London Borough Council [1981] 1 Ch 448
Decro-Wall International S.A. v. Practitioners in Marketing Ltd. [1971] 1 WLR 361

Legislation referred to:
Employment Act [Sing], ss. 10(1), (3), 11, 10

For the appellant - J.B. Jeyaretnam
For the respondent - H. Elias

JUDGMENT

LP Thean J:

By an agreement in writing made on 31 May 1971 the appellant was engaged by the respondent as the latter's executive officer commencing from 1 June 1971. It was a term of the agreement that he was to be placed on probation for the first three years. However, after a year's probation he was confirmed in his post with effect from 1 June 1972 and thereafter continued to serve as such executive officer. On 24 June 1976 the appellant received from the respondent a letter dated 23 June 1976 alleging that the appellant was in breach of r. 111 of the terms and conditions of service of the respondent, in that the appellant had taken up part-time employment by becoming an active partner of the Mitre Hotel and also a partner of the Pavilion Restaurant. The appellant was immediately suspended from service. The appellant replied on 24 June 1976 explaining that he merely inherited his late father's shares in the Mitre Hotel and Pavilion Restaurant businesses but was not an active partner as alleged. On 7 September 1976 the appellant was informed by the respondent that a formal hearing by the disciplinary inquiry committee of the respondent would be held on 15 September 1976. The appellant did not attend the hearing, having previously informed the secretary of the committee that he had nothing further to add to what he had said in his letter. Subsequently, the appellant received from the respondent a letter dated 5 November 1976 informing him that he had been found guilty of violation of r. 111 of the terms and conditions of service and that his service with the respondent was terminated with effect from 23 June 1976. The appellant protested against the decision of the respondent.

On 13 October 1978 the appellant took out a writ against the respondent. In his statement of claim, as subsequently amended, the appellant alleged: (i) that the appellant was denied his right of appeal against the decision to dismiss him; (ii) that there was no evidence in law to warrant any finding that the appellant was guilty of any breach of e. 111 of the terms and conditions of service of the respondent and the finding was wrong in law, and (iii) that the proceedings against the appellant were conducted in breach of or alternatively contrary to the rules of natural justice or the duty to act fairly. On these grounds the appellant said that the decision to dismiss him was null and void and he claimed: (i) a declaration that the dismissal was null and void and a declaration that he had continued and was in the employment of the respondent in the position he held before 23 June 1976 and was entitled to be remunerated as such, or (ii) alternatively damages. The respondent initially in the defence denied that the dismissal of the appellant was wrongful, but at the commencement of the hearing in the High Court, the respondent with leave of the Court amended the defence and conceded that the dismissal was wrongful and that the appellant was entitled to damages but not the declarations. So the issue before the Court was one of appropriate relief to be given to the appellant.

The case was heard before Chua J and he held that the declarations sought for by the appellant ought not to be made and that his remedy lay in a claim for damages. He awarded to the appellant his salary for the period from 1 June 1976 to 5 November 1976 (the latter being the date the letter of dismissal was served on him) and a sum equivalent to three months' salary as damages. Not content with that decision the appellant appealed, contending that the learned Judge erred in not granting the declarations sought and in holding that the appellant was only entitled to three months' salary as damages. At the conclusion of the appeal we dismissed it with costs to the respondent.

Mr. Jeyaretnam on behalf of the appellant argued that upon a true construction of the terms and conditions of service under which the appellant was employed ("Term & Conditions of Service") the respondent could not terminate his service except in circumstances where he had been found guilty, in accordance with the disciplinary procedure therein prescribed, of a breach of any provisions of the rr. 97 to 117 of the Terms & Conditions of Service, and that the whole scheme of service as provided in the Terms & Conditions of Service contemplated that an employee of the respondent such as the appellant upon confirmation would have permanence in his employment until he retired, unless either he resigned from his employment or was found guilty of misconduct which entitled the respondent to dismiss him summarily. As the appellant was wrongfully dismissed he was entitled to the declarations sought. This argument was not tenable and we were unable to accept.

The terms of the appellant's employment in so far as material are these. Under Clause 2(f) of the agreement made on 31 May 1971 between the appellant and respondent the appellant's appointment was subject to the Employment Act (Cap. 122) and to all the respondent's "Regulations & Rules from time to time in force". Section 10(1) of the Act provides that either party to a contract of service (employer or employee) may at any time give to the other party notice of his intention to terminate such contract. The length of notice shall be the same for both employer and employee and shall be determined by any provision made for such notice in the contract and in the absence of such a term shall be not less than the period as prescribed in s. 10(3) of the Act; and the length of notice for determining a contract of service such as the appellant's is not less than four weeks. Under s. 11 of the Act, in force at the material time, either party to a contract may terminate the contract without notice or, if a notice has already been given in accordance with s. 10 without waiting for the expiry of that notice, by paying to the other party a sum equal to the amount of salary which would have accrued to the employee during the term of such notice. The other terms pertaining to termination of the appellant's employment are also found in Clause 26 of the document headed "Memorandum of Terms & Conditions of Services Applicable to All Monthly Rated Permanent Officers of the Corporation" (the receipt of which the appellant had acknowledged), which clause stipulates as follows:

> 26, Unless otherwise provided, the appropriate notice period as prescribed in the "Terms & Conditions of Service" or a sum equivalent to the consolidated salary for the same period in lieu of notice must be given by an Officer who desires to resign from the service of the Corporation. The Corporation itself is also governed by the same provision.

It was argued by Mr. Jeyaretnam that this clause did not give to the respondent any right pertaining to termination of the appellant's employment and the last sentence thereof merely meant that the respondent was bound to observe this term. Such an argument was plainly wrong; if that was the meaning intended, the sentence would be otiose. In our opinion full effect must be given to this sentence and it means that unless otherwise provided, the appropriate period of notice as prescribed in the Terms & Conditions of Service or a sum equivalent to the "consolidated salary" for the same period in lieu of notice must also be

given by the respondent should it wish to terminate the service of the appellant. We are reinforced in our view by the presence of r. 66 of the Terms & Conditions of Service, which reads as follows:

> 66. Subject to any provision to the contrary in any agreement in writing with any particular employee, the Corporation in terminating the service of any employee without giving the requisite notice shall pay to the employee a sum equal to the total of the salary or wages and allowances in the nature of or related to salary or wages which would normally have been paid to the employee had he continued in the services for the period of such notice commencing on the date of his discharge.

The Terms & Conditions of Service do not expressly provide any specific period of notice required to be given by the respondent in terminating the employment of the appellant. In the absence of such a provision s. 10 of the Employment Act applies and accordingly not less than four weeks' notice would be required to be given by either the appellant or the respondent in terminating the service contract.

On a true construction of the Terms & Conditions of Service the employment of the appellant could be determined by the requisite notice or payment in lieu of such notice, and rr. 117 and 119 thereof providing for a summary dismissal for misconduct are not exhaustive of the right of the respondent to terminate the service of the appellant. The appellant relied on r. 30 of the Terms & Conditions of Service, which is as follows:

> 30. All existing staff, shall, upon satisfactory completion of their probationary period, be examined by the Medical Officer in charge of Staff before confirmation in their appointments, and if' passed fit, shall be placed on the permanent establishment.

In that connection the case of *McClelland v. Northern Ireland General Health Services Board* [1957] 1 WLR 594 was cited in support. There the defendant board in an advertisement for the post of a senior clerk said: "Subject to a probationary period appointment will be permanent and pensionable". The plaintiff applied for the appointment and was selected. Having served the probationary period she was confirmed in her post as a senior clerk. The conditions of service contained provisions for dismissal for gross misconduct and in circumstances where an employee was proved to the satisfaction of the defendant to be inefficient and unfit to merit continued employment; in the latter event six months' notice was required for termination of the employment. Four years later the defendant terminated the plaintiff's employment by six months' notice on the ground of redundancy. The notice was not accepted and the plaintiff commenced proceedings to determine whether her employment had been validly terminated. The House of Lords (by a majority) held that on a true construction of the conditions of service the provisions for termination of service were comprehensive and exhaustive and the defendant board thereby debarred itself from terminating the plaintiff's contract by notice except on the ground stated in the conditions. However, both Lord Goddard and Lord Evershed held that the words, "permanent and pensionable" in the advertisement (assuming that they were part of the contract) did not by themselves mean that the employment was for life until retirement. Lord Goddard said, at p. 601:

> That an advertisement offers permanent employment does not, in my opinion, mean thereby that employment for life is offered. It is an offer, I think, of general as distinct from merely temporary employment, that is, that the person employed would be on the general staff with an expectation that apart from misconduct or inability to perform the duties of his office the employment would continue for an indefinite period. But apart from a special condition, in my opinion, a general employment is always liable to be determined by reasonable notice. Nor do I think that because a person is offered pensionable employment the employer thereby necessarily engages to retain the employee in his service long enough to enable him to earn a pension.

A similar view was expressed by Lord Evershed at p. 610.

In the instant case the words in r. 30, namely: "shall be placed on the permanent establishment", do not admit of a construction that the appellant's employment with the respondent would be for life ending on his retirement. They merely mean that the appellant would be on the general and regular staff of the respondent, as distinct from temporary or probationary, and his employment on that basis would continue for an indefinite period but liable to be determined by notice. We are therefore in agreement with the learned Judge in holding that the terms of service under which the appellant was employed did not confer on him a permanent employment by the respondent until his retirement.

We now turn to consider whether in this case the appellant should be granted the declarations asked for. The appellant relied principally on *Vine v. National Dock Labour Board* [1957] AC 488. That was an unusual case of master and servant. The plaintiff was a registered dock labourer available for work in a reserve pool under a scheme set up by the Dock Workers (Regulation of Employment) Order, 1947. Under the provisions of the Order the defendant board was the employer of all dock labourers in the reserve but they worked for shipowners, charterers or others to whom they were allocated. Unless a dock labourer was employed by the defendant board in the pool he could not work as a dock labourer at all for anyone. Further, under the Order the employment of a registered dock labourer in the reserve pool available for work could not be terminated except in certain specified ways. The plaintiff was wrongfully dismissed by the defendant and he initiated proceedings against the defendant claiming both damages and a declaration that his dismissal was illegal, *ultra vires* and invalid. At the Court of first instance, Ormerod J awarded him damages and granted the declaration sought for. On appeal, the Court of Appeal (with Jenkins LJ dissenting) set aside the declaration, holding that the sum awarded as damages was an adequate remedy. In his dissenting judgment Jenkins LJ held that in that case the declaration ought to be made. First, the analogy of master and servant was not applicable as the statutory provisions setting up the scheme for employment of dock labourers gave a number of rights and imposed a number of obligations "going far beyond any ordinary contract of service". Secondly, in the circumstances of that case damages alone would not be an adequate remedy. The plaintiff had been employed as a dock labourer for more than 30 years; it was his life's work which he started from boyhood. He should therefore not be removed from that employment, if he wished to continue in it. Thirdly, a declaration "would necessarily be an adequate remedy, for by definition it would exactly fit the legal rights of the parties". The effect of the declaration would be that the plaintiff would once again be a dock labourer in the pool available for work, and no real inconvenience to anyone would be caused by his returning to that position. On further appeal to the House of Lords the views of Jenkins LJ were adopted and it was held that the declaration made by Ormerod J was properly made. Clearly the circumstances in that case were exceptional. Viscount Kilmuir LC in holding that the plaintiff's dismissal was invalid and that his name was never validly removed from the register and he continued in the employ of the defendant board said, at p. 500:

> This is an entirely different situation from the ordinary master and servant case; there, if the master wrongfully dismisses the servant, either summarily or by giving insufficient notice, the employment is effectively terminated, albeit in breach of contract. Here, the removal of the plaintiff's name from the register being, in law, a nullity, he continued to have the right to be treated as a registered dock worker with all the benefits which, by statute, that status conferred on him. It is therefore right that, with the background of this scheme, the court should declare his rights.

The facts in *Vine's* case are in no way comparable to those in the instant case and the exceptional circumstances warranting the declaration are totally absent here. However, a case which in principle is on all fours with the instant case is *Francis v. Municipal Councillors of Kuala Lumpur* [1962] 28 MLJ 407. The plaintiff there joined the staff of the then Municipal Council of Kuala Lumpur on a temporary basis as a clerk and was subsequently placed on the permanent staff. A few years later he was dismissed on the ground of certain conduct complained of, but the dismissal was made pursuant to the decision of the Establishment Committee of the Council and the letter of dismissal was signed by the acting treasurer of the Council. It was only the President of the Council who was empowered to dismiss certain staff such as the plaintiff. Hence his dismissal was irregular. He sued the Municipal Councillors of Kuala Lumpur for wrongful dismissal, claiming a declaration that the decision of the Establishment Committee of the Municipal Council was *ultra vires* and null and void and also a declaration that the termination of his employment was wrongful and void and that he had the right to continue his employment with the Municipal Councillors. There was also an alternative claim for damages for wrongful dismissal. At the Court of first instance the learned Judge held that there was no wrongful dismissal and dismissed the claim. On appeal the Court of Appeal (by a majority) held that there was a wrongful dismissal and allowed the appeal. However, the Court only awarded to the plaintiff damages amounting to three months' salary for wrongful dismissal. The plaintiff, not content with that, appealed to the Privy Council pressing for the declarations sought. The Judicial Committee of the Privy Council held that it was beyond doubt that on 1 October 1957 (the date when defendant purported to dismiss the plaintiff) there was a *de facto* dismissal of the plaintiff, as on that date he was excluded from the defendant's premises and had since then not done any work for the defendant. Therefore he must be treated as having been wrongfully dismissed as on that day and his remedy lay only in a claim for damages; it would be unreal to accede to the contention of the plaintiff that he still continued to be in the employment of the defendant. The declarations sought by the plaintiff were refused. Lord Morris of Broth-y-Gest in delivering the judgment of the Board said, at p. 410:

> In their Lordships' view when there has been a purported termination of a contract of service a declaration to the effect that the contract of service still subsists will rarely be made. This is a consequence of the general principle of law that the Courts will not grant specific performance of contracts of service. Special circumstances will be required before such declaration is made and its making will normally be in the discretion of the Court. In their Lordships' view there are no circumstances in the present case which would make it either just or proper to make such a declaration.

Having regard to the circumstances of this case and following the decision of the Privy Council in *Francis'* case (*supra*) we are in agreement with the learned Judge that there were no circumstances which made it just or proper to make the declarations asked for by the appellant, and that his remedy lay only in a claim for damages.

The learned Judge awarded to the appellant as damages a sum equivalent to three months' salary. That assessment was also challenged by the appellant as inadequate and wrong. Mr. Jeyaretnam argued that the wrongful dismissal was a repudication of the appellant's contract of employment and this repudiation had not been accepted by the appellant, and the learned Judge was wrong in his finding that the appellant accepted the repudiation of his contract of employment at the trial. Consequently, that contract still subsisted and the appellant should be awarded damages covering the whole period from 5 November 1976 until his acceptance of such repudiation. He did not, however, define the period with reference to which the damages in his submission ought to be calculated. Such an argument was totally unrealistic,

having regard to the circumstances of this case. The appellant was suspended from service as from 24 June 1976. He "returned everything" to and "stopped working" for the respondent. On 5 November 1976 he received a letter from the respondent purporting to dismiss him with effect from 24 June 1976; thenceforth he was completely precluded from performing any service for the respondent permanently. For all practical purpose the appellant ceased to be in the employ of the respondent as from 5 November 1976 and the relationship between him and the respondent as that of employee and employer was completely served as from that day. Effectively there was a *de facto* dismissal of the appellant, albeit wrongful. If, as the appellant contended, such a *de facto* dismissal, which was a repudiation of his service contract by the respondent, did not in effect bring the contract to an end *de jure* until such repudiation was accepted by the appellant, then the short answer is this: the respondent had accepted the repudiation at the trial (if it had not accepted it earlier) when his claim for declarations failed and he pursued his claim for damages for wrongful dismissal. However, it does not follow that on that basis he would be entitled to damages covering the period from 5 November 1976 to the date of trial. This was very clearly demonstrated by Buckley LJ in *Gunton v. Richmond-upon-Thames London Borough Council* [1981] 1 Ch 448:

> Finally, in a case of wrongful dismissal in the absence of special circumstances the damages recoverable on the footing of an accepted repudiation must, I think, be as great as, and most probably greater than, any damages which could be recovered on the footing of an affirmation of the contract by the innocent party and of the contract consequently remaining in operation.

And later he said, at pp. 469-470:

> Suppose, however, that the master were to dismiss the servant summarily or on a month's notice, and the facts were such as to justify the view that the servant did not accept the master's repudiation of the contract until the end of 10 weeks from the servant's exclusion from his employment. In such a case, if I am right in supposing acceptance of a repudiation to be requisite in master and servant cases, the master would be guilty of a breach of contract continuing *de die in diem* for refusing to offer the servant employment from the date of exclusion down to the date of acceptance, and thereafter for damages on the basis of a wrongful repudiation of the contract. Could the servant properly claim damages under the second head in relation to a period of three months from the date of acceptance as well as damages under the first head in relation to the 10 week period? In my judgment, he clearly could not. His cause of action would have arisen when he was wrongfully excluded from his employment. The subsequent acceptance of the repudiation would not create a new cause of action, although it might affect the remedy available for that cause of action. The question must, I think, be for how long the servant could have insisted at the date of the commencement of his cause of action upon being continued by the master in his employment.

We can find no ground for increasing the quantum of damages awarded by the learned Judge. The appellant was wrongfully dismissed on 5 November 1976. He could not claim for salary under the service contract in respect of any period after that date, as he had not performed any services: see the judgments of Shaw LJ and Buckley LJ in *Gunton v. Richmond-upon-Thames London Borough Council* [1981] 1 Ch. 448 at pp. 459 and 468; see also the judgment of Salmond L.J. in *Decro-Wall International S.A. v. Practitioners in Marketing Ltd.* [1971] 1 WLR 361. He could only claim for damages for being wrongfully prevented from earning that salary. In this connection upon being dismissed the appellant was immediately under an obligation to mitigate his loss. That he failed to do so. Apart from some feeble attempts or enquiries, he made no serious efforts to obtain alternative employment. With full employment prevailing in Singapore we see no reason why he could not have obtained alternative employment, if indeed he had made the efforts.

We have been referred to the case of *Gunton v.Richmond-upon-Thames London Borough Council* (*supra*) which we find of some assistance in determining the quantum of damages. In that case the plaintiff's employment with the defendant council was terminable by either party giving to the other one month's notice. But the plaintiff's employment was not terminated on this ground; he was dismissed by the defendant on disciplinary ground and the necessary procedure for dismissal on such ground was not adhered to. The dismissal therefore was wrongful and the Court of Appeal held that in assessing damages the plaintiff was entitled to insist that on the date he was excluded from employment he should not be dismissed on disciplinary grounds until the prescribed disciplinary procedures were recommenced and carried out in due order but with reasonable expedition. Hence the period by reference to which the amount of damages should be assessed is a reasonable period from that date for carrying out the procedures plus one month, less any amount earned during the period. In the words of Brightman LJ "the plaintiff is entitled to an order for an enquiry as to damages sustained by him by reason of his wrongful exclusion from service of the council from 14 January 1976, until the expiration of a notional one month's notice served on the day when the proper disciplinary procedures, if followed, could have been concluded". The period for completing the disciplinary procedures was estimated by him to be two months to which was to be added the period of 1 month for the notice of termination.

On the basis of assessment in *Gunton's* case (*supra*) we do not think that the appellant was entitled to damages in excess of three months' salary. He was wrongfully excluded from his employment on 5 November 1976 and following *Gunton's* case he was entitled to insist that the respondent should carry out the procedures for disciplinary inquiry in due form before dismissing him and on the basis of the rules as set out in the Terms & Conditions of Service the whole procedure could be carried out with reasonable despatch in less than two months to which should be added a further period of one month for the notice for terminating his employment.

Also found at [1986] 1 CLJ 262